

ECONOMICS OF FAIRNESS WITHIN THE FOOD SUPPLY CHAIN IN CONTEXT OF THE EU

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Abstract: *The paper broaches the issue of unfair trading practices (UTPs) at the expense of, economically spoken, weaker actors among the food supply chain in context of the EU. For illustrating the concept of UTPs and delivering a theoretical basis for scrutinizing the term of fairness in respective trading practices the paper suggests the three variables 1) bargaining power, 2) market power/anti competitive practices and 3) unequal gain distribution. Subsequently the article presents selected national food-specific legislative based reactions towards UTPs evolved in context of the three variables. Ultimately the paper presents a qualitatively generated hypothesis which presumes that legislative food-specific measurements focussing on protecting suppliers lead to a beneficial monetary share for farmers, by means of influencing the producer price to a monetarily advantageous extent. The hypothesis was generated unprejudiced in the run-up to the paper. The research design which led to the hypothesis mentioned will be presented.*

Keywords: *Food supply, fairness, bargaining power, EU, unfair trading practices*

INTRODUCTION

Evidence reveals the clear existence of unfair trading practices (UTPs) among different members of the food supply chain within the context of the EU.¹ A significant part of scientific argumentations pursue the assumption that trading practices within the food supply chain can be characterised as being subject to a rather top down hierarchy at the expense of less powerful actors, mainly farmers, suppliers or small retailers (Morgan et al. 2006; Konefal et al. 2005). Sharing this perspective and considering current trading practices as being unjust and to be resigned in the future by means of targeted legislative and binding measurements, the paper sets three focal points. The first part of the present paper will theoretically scrutinize the term of fairness concerning trading practices within the food supply chain. Aiming to underline the alarming position of economically spoken, weaker parts of the food chain, three closely interlinked variables, which shall form the theoretical basis for a judgement of fairness

in trading practices, will be suggested.² They shall have the names: 1) *bargaining power*, 2) *market power/anti competitive practices* and 3) *unequal gain distribution*.³

Having theoretically worked out UTPs by means of the three variables mentioned, the second part of the paper considers EU Member States focusing besides on several forms of legislative actions towards UTPs in economic processes, also exclusively on food-specific legislative measurements to tackle UTPs evolved and being illustrated by the use of the three variables being defined in the first part of the essay.⁴ The measurements being referred to, mainly but not exclusively

1 The present paper follows the thematic division of UTPs conducted by Renda et al. 2014. Its definition of UTPs encompasses: 1) Lack of clarity in contract offer, 2) Lack of written contract, 3) Abuse of economic dependence/bargaining power, 4) Liability disclaimers, 5) Unilateral modification clauses, 6) Terms unreasonably imposing or shifting marks, 7) Unfair use of confidential information, 8) Unfair use of confidential information after contract expiry, 9) Unfair breaking off of negotiation, 10) Unfair contract termination and 11) Refusal to negotiate.

2 In order to widen the perspective gradually exemplifying examples for UTPs in the non-EU context, the variable unequal gain distribution will be considered for the context of the USA and Costa Rica.

3 The selection and theoretical arrangement of the variables bargaining power and market power/anti competitive practices was inspired by Commission of the European Communities 2009: 5-13. The variable unequal gain distribution resulted as a key figure in most academic writings referred to in this paper.

4 The paper orientates itself towards Renda et al. 2014 who classified EU Member States which put a legislative emphasis on UTPs in the food sector only (Renda et al. 2014: 14). These Member States are: the Czech Republic, Hungary, Italy, Slovakia, Spain and the United Kingdom. Unlike the rest of the Member States named, the Czech Republic does not cover UTPs selected by Renda et al. 2014 concerning the general retail sector, within their national legislative repertoire (Renda et al. 2014: 12).

address UTPs at the expense of suppliers.⁵

The third part of the paper revealed through case-by-case analyses, that specifically food-related legislative measurements for the benefit of suppliers can correlate with an increased and beneficial financial outcome for producers within nationally carried out economic procedures.⁶ This understanding resulted via the consultation of the producer price concerning the indicator “bread and cereals” provided by Eurostat 2015.⁷ By comparing national producer prices of the Member States being included in the survey of Eurostat with selected national law, the following hypothesis was generated:

Legislative food-specific measures which focus on protecting suppliers lead to a beneficial monetary share for farmers, by means of influencing the producer price to a monetarily advantageous extent.

The paper concludes by summarizing the main findings and providing an outlook for further research which could be pursued in the connection with the hypothesis generated in context of the present paper.

LITERATURE OVERVIEW

Academic literature reveals a great variety of scientific contributions and critical evidenced reviews on fair treatments among the food supply chain. The key variables emerging from research and regulatory effort shall be in context of the paper: 1) *bargaining power*, 2) *market power/anti competitive practices* and 3) *unequal gain distribution*.

In the following the three variables will be investigated from two perspectives. First, evidence for forms of inequality in context the food supply chain by means of illustrating UTPs within the three variables will be provided. Second, selected food-specific legislation measures implemented by the EU Member States which tackle UTPs evolved in context of the variables will be described.

Evidence

The term *food supply chain* appears to be both a dynamic and a rather fixed term at the same time. In general terms it can be stated that it either encompasses the direct exchange of food from the farmer to the consumer, or most commonly, however,

the different stages of activities such as the processing of raw agricultural commodities as well as the checking of consumer safety standards and packing or transport activities which add value to food products before they are sold (European Commission 2015: 1). Practically the food supply chain accounts for 5 % of EU value added and 7 % of employment. A special characteristic in this context is that it economically connects the agricultural sector, the food processing and manufacturing industry, wholesale trade, and the distribution sector (Chauve et al. 2014: 304). Important to stress at this point is also the fact that besides the two forms of the food supply chain already presented, different raw products cause different degrees of complexity in terms of actions being realised in it. Whereas milk and sugar enable a production and processing at a local level, the final product can be sold through a rather short supply chain to retailers in national markets. In contrast to milk and sugar, fruits or vegetables, however, demand a high number of atomised producers who sell their goods locally to many wholesalers supplying local retailers in a next step. Above all, manufactured food forces large food manufacturers to operate in many national markets and crossing borders (ibid. 304). As a consequence modern supply chains can be long and complex (Lotta/Bogue 2015: 115). In contrast to these rather diversified characteristics of the food supply chain which complicate a single overall definition, when considering different forms, processes and products involved in it, one striking element seems identifiable in most of its appearances and theoretical representations. Even though the food supply chain implies long-term working processes for all actors involved at several stages during the fabrication of a particular product, it still promotes striking inequalities between its contributors.

As a first indicator for considering unfair trading practices and to scrutinize the term of fairness among the food supply chain for the majority of its members, the present paper suggests the variable *bargaining power*.

“Within the food supply chain, significant imbalances in bargaining power between contracting parties are a common occurrence and this issue was flagged as a serious concern by stakeholders.” (Commission of the European Communities 2009: 5)

Asymmetric scopes of power to enforce self-centred profit distributions and/or possibilities to actively influence certain actors to conduct economic performances according to one’s own concepts and interests form a threat towards a fair functioning of bargaining practices within the food supply chain. As a result it can be observed that the consensus of many academic contributions ascribe the food supply chain a rather top down hierarchy at the expense of less powerful actors, mainly farmers or small retailers (as informative examples can serve here: UK Food Group 2003, 2004; Morgan et al. 2006; Konefal et al. 2005). In general terms, imbalances in bargaining power can be understood as contractual arrangements, which tend to be imposed to the advantage of more powerful actors (European Commission 2013: 6). Leaving the contractual sphere behind, also spontaneous and unprompted actions, mostly initiated by respectively higher actors of power, can be imposed on the weaker members. As

5 From the legislation being investigated in context of the paper the Hungarian and the British formulate the role of suppliers tendentially more precisely than the Italian and Spanish jurisdiction which target UTPs against economically weaker members from a more general but not less for the intentions of the paper appropriate view. For an overview: Renda et al. 2014: 176-180, 235-239, 184-188, 226-229.

6 The paper uses past tense here, as it worked with the qualitative approach of the case-by-case analysis which according to pertinent literature implies the generation of hypothesis after and not before respective acts of investigation. So did the present paper.

7 The indicator “bread and cereals” appears to be attractive for the essay as it refers to temporally recent data on the one hand and a rather high number of, for the present paper, relevant Member States, on the other hand. Namely: Hungary, Italy, Spain and the United Kingdom. The Czech Republic and Slovakia were not covered in the census mentioned.

concrete examples of these rather spontaneous operations can be considered: late payments, unilateral changes in contracts, ad-hoc changes to contractual terms or upfront payments as entry fees to negotiations (Commission of the European Communities 2009: 5).

Considering the fact that certain actors do have more bargaining powers than others also implies the necessary understanding that power imbalances do affect all members of the food chain, not only producers in form of farmers who falsely tend to be put in the light of the only actor with a very limited capacity of bargaining power (European Commission 2013: 6). The European Commission delivers two comprehensive examples of UTPs by mentioning unequal trading practices between first, a large retailer and a cheese producer and second, a large multi-national soft drink producer and a small retailer (European Commission 2014a).⁸ What becomes clear when following the idea of the examples mentioned, is that forms of unequal dependencies exist between several members in the food supply chain, usually for the benefit of the stronger part involved. As one of the main striking reasons for forms of unequal dependencies and thus unfair trading practices, the factor of accessing the market can be named. Whereas producers are mostly forced to accept even very cheap prices for their goods from larger buyers (for example wholesalers, retailers or suppliers) in order to get access to the market, also retailers need to agree on unequal proposals that large multinational food producers suggest, as they offer branded products that retailers economically cannot live without (Commission of the European Communities 2009: 5-6). Despite the circumstance that several actors among the food supply chain have to make concessions to higher settled ones, a significant high number of academic contributions focus on farmers in particular. So Morgan et al. underline the upcoming weak position and disempowerment of farmers in bargaining processes (Morgan et al. 2008: 59, 70). Also Bečvářová and Vorley describe decreasing forms of farmer's possibilities to articulate and eventually realize their opinions of price determination in favour of higher settled actors (Bečvářová 2002: 449; Vorley 2006: 1).

Considering the preceding, the variable *bargaining power* implied unequal and consequently unfair scopes to shape bargaining processes among differently influential actors. The second variable *market power/anti competitive practices* builds up on the findings presented, as it describes unequal economical starting positions of different actors among the food supply chain. By doing so, it aims to explain possible reasons for disparate scopes of bargaining power. According to the OECD the term market power necessarily implicates firms or group of firms which possess a monopoly position in certain areas of economics. Setting this definition

for granted, enterprises pertained are able to influence price settings of products without being affected by notably forms of competition (OECD 2012). As a result competitive actions are limited and smaller economic actors are subject to stronger entities. The result can be a market concentration. In other words: the strong market concentration in the food sector allows food processors or especially retailers dispose of a far more stronger bargaining power than suppliers (Vaqué 2014: 294).

Regarding the numbers of actors involved in different parts of the food supply chain the rather aged metaphor of the "hourglass" by Heffernan, Hendrickson and Gronski for the agri-industrial system, could not be more current (Heffernan et al. 1999: 1). Around 12 million farms in the EU produce agricultural products for 300 000 processing enterprises in the food and drink industry. The processors sell the products sprang up, through 2.8 million enterprises within the food distribution and food service industry. In the end 500 million consumers access the products processed (European Commission 2015: 1). What becomes clear now is that the food processing and distribution actors among the food chain appear to be in a strong numeric minority compared to the farmers. Due to this circumstance it seems only logic that they would form the centrepiece of the hourglass, which connects both bigger ends, namely the farmers and the consumers. Unlike the assumption that the most strongly represented actor in the production area is the one with the highest bargaining power, the actors integrated in the hourglass' centrepiece seem to possess the main part of the defined term of market power (in particular the retailers within the distribution area). Referring back to the term of market power and its indication towards occurrences of monopoly positions as also a resulting market concentration in certain economical areas, a significant trend of single retailers expansions can be observed. The European Commission illustrates the ongoing process of economic expansion and influence of ten retailers for the European context (European Commission 2014b: 51-52). In year 2000 the ten retailers integrated in the observations made up 26 per cent of the entire EU market share already. In 2011 30,7 % were registered.

An even higher tendency of market power of single actors can be detected particularly in the milk sector. A report delivered by Ernst & Young for the European Commission in 2013 reveals the extraordinary high market power of several processors involved in the share of national milk delivery. Especially the processor "Arla Food" in Denmark, "Valio Oy" in Finland and "Friesland Campina" in the Netherlands are closest to possess a monopoly status, as they hold 90%, 85% and 75% of the milk delivery in their particular country (Ernst & Young 2013: 78-79).⁹ These three countries are followed by Austria, Luxembourg, Slovenia and Sweden, where the biggest processor particularly provides between 40% and 65% of the nationally consumed milk (ibid. 78-79).¹⁰ The declining

8 The first example describes how a large retailer subtracts 5,000€ from the money owed to the supplier, because of a promotional anniversary campaign run in all retail outlets during a short period of time. The second example mentions a large multi-national soft drink producer who threatens to terminate the commercial relationship when the supplier refuses to conduct actions demanded.

9 The data collected refers to the year 2011 for Denmark and 2010 for Finland and the Netherlands.

10 The data collected refers to the year 2010 for Austria and 2011 for Luxembourg, Slovenia and Sweden.

number of retailers and the growth of single powerful actors among the food chain limit the scope of competition in the retail sector. As a consequence farmers are forced to sell their goods to “a handful of buyers” who thus have a stronger position in bargaining- and price setting processes (Morgan et al. 2008: 59, 64). In contrast to other sectors, especially the food sector is affected by UTPs due to lacking forms of competition. This is because food markets are mainly national or local in scope (Commission of the European Communities 2009: 6). As a result expanded food distribution firms are in the comfortable bargaining position of finding farmers who for two reasons have no real alternative to the prices presented by processors. The symbiosis of first, no real competitive acts between retailers and second, the strong local dependency of farmers, who suffer from the fact that a transport of produced goods to third purchasers appears to be expensive, harms an equal and fair bargaining process between producers and processors. The low rate of competitive actions between retailers and consequential evolving forms of market concentration shown, contribute to disparate starting positions in bargaining processes which are considered to be responsible for harming equal and thus fair scopes of realising trading practices for all, not only several, actors among the food supply chain.

In the previous paragraphs of this paper, inequalities and UTPs were described via disparate capacities of different members within the food supply chain towards having access to bargaining- and market power. As a result but also as a strengthening factor of the two variables already introduced, the third variable unequal gain distribution will be suggested. Taking into account several uneven forms of access to power in bargaining processes, also the gain distribution as the ultimate stage for all entrepreneurial and producing entities seems to be characterized through inequalities.

“The 2011 figures compiled by Eurostat show that farmers receive 21 per cent, the food industry gets 28 per cent and the remainder, 51 per cent, goes to food retail and food services.” (Healy 2015)

One of the current figureheads of critical perspectives on UTPs in the European food supply chain is the Irish politician and member of the European Parliament for the Midlands–North-West constituency, Mairead McGuinness. In her quotation which was being published in the “Irish Times”, she clarifies extraordinary differences concerning the shared outcome of the economic gain distribution of products for different actors within the food chain. On the basis of these findings she also describes that the producer share dropped from 31 per cent in 1995 to 24% in 2005 and to 21% in 2011. As a result of the numbers raised, she perceives the farmer’s reception of slightly more than one-fifth of the consumers price for food as an insufficient share for those who provide the “lion’s share” of the input (Healy 2015). As a result of the numbers stated an unfair share of financial resources for products can legitimately be estimated. Staying with the consumer price, but this time for milk only, a similar picture opens up. An analytical two-step can help at this point to reveal the strong correlation between the money supply a farmer receives for a certain quantity of milk and the financial funds processors and retailers get.

Comparing first the farmer’s share of the consumer price for milk (in percentage of the consumer price) a great heterogeneity among the Member States of the EU opens up. Ernst & Young reveals an overall trend of decreasing producer prices for the period 2000–2011 (Ernst & Young 2013: 66–67).¹¹ Whereas in countries like Finland, Germany and Portugal the farmer’s share of the milk consumer price stays rather high throughout the period mentioned (mostly between 40 and 50%), countries like Italy, Latvia, Lithuania and Sweden remain on a lower level (mostly between 20 and 30%) (Ernst & Young 2013: 67).

Analysing secondly the share of processors and retailers (Euro/100 kg) for ECM milk it can be observed that the money supply for processors and retailers in the countries where the farmer’s share of the consumer price for milk is higher, tends to be lower and vice versa. Taking into consideration the countries already observed in the foregone paragraph, an interesting correlation between the strong decrease of the Finish farmer’s share of the consumer price for milk in 2011 (10% less than in 2010) and the share of Finish processors and retailers which increased in 2011 by almost 30€, can be investigated. Compared to foregone increases or decreases of the Finish processors and retailers (between around 2 and 6€) this last one is significantly high. Observing the countries with a rather low farmer’s share of the consumer price for milk (Italy, Latvia, Lithuania) the contrary can be noticed for the particular share of processors and retailers. Whereas the average share of processors and retailers lies between around 20€ and 50€ among the European States, Italy and Lithuania show monetary values over between approximately 80€ and 120€ (Ernst & Young 2013: 68–69).¹²

This brief analytical two-step conducted can illustrate a correlation for an opposing movement in economic gain distribution among members of the food supply chain. In general terms a trend between a rather higher farmer’s share of the consumer price for milk and a lower share of processors and retailers can be observed.¹³ Another indicator for demonstrating inequalities in the profit distribution among the members of the food supply chain can be found in the value-added.

The European Commission introduced a bar chart which illustrates increasing differences in the distribution of the

11 “Only six countries out of the 24 for which data is available have a bigger farmer’s share of the consumer price for milk in 2011 than in the first year of collected data. These countries are Bulgaria, Cyprus, the Czech Republic, Lithuania, Poland and Slovakia. If only data from Member States was taken into account (data since the countries joined the EU), then the farmer’s share of the consumer price grew in only four of the former. Indeed, in Bulgaria and the Czech Republic, the share was lower in 2011 than in 2008 and 2004.” (Ernst & Young 2013: 66–67).

12 Latvia forms an exception as it does not shows rates over 100€ concerning its share of processors and retailers (Eur/100 kg). Nevertheless it presents correlations between a lower farmer’s share of the consumer price for milk (especially very low in 2008 with 23 per cent) and the share of processors and retailers (the highest farmer’s share of the consumer price for Latvian milk can be identified in 2008 with 50,40).

13 As also a higher share of processors and retailers and a lower farmer’s share of the consumer price for milk.

value-added in the EU food supply chain. From 1995 until 2011 the distribution of the value-added for the agriculture sector decreased from 31 to 21%. At the same time the share for the food wholesale increased from 11 to 51 % (Matthews 2015).¹⁴ Mairead McGuinness takes these numbers collected as an indicator for illustrating a lower farmer's share of consumer spending on food due to an imbalance of power between producers and retailers in context of the food supply chain (Matthews 2015). Widening ones perspective towards UTPs in non-EU contexts, it becomes clear that inequalities between different members of the food supply chain can be found on a global scale. As exemplifying examples the present paper suggests the USA and Costa Rica (the latter as one representative country which is affected by UTPs in the banana production and supply).¹⁵

In 2013, the United States Department of Agriculture Economic Research Service (USDA) published a statistical survey which illustrates the economic gain distribution among participating actors forming part of the US food supply chain. It shows that of one Dollar spent by a consumer, only 10¢ reaches the farmer, whereas the food processing (22¢) and the foodservices (31,2¢) receives the highest share (USDA 2013). Building on the insights the variable *unequal gain distribution*, the USDA illustrates a similar picture as it is presented in the EU context. Besides the fact of unequal allocation of financial resources between members among the US food supply chain, the USDA also reveals the amount of money farmers receive for their products once production costs are subtracted (USDA 2015: 1, 7-8; USDA 2009: 6). Especially crop products demonstrate an enormous gap between the prices farmers invest in production and the final financial outcome they receive (USDA 2015: 8).¹⁶ Taking into account the banana production in Costa Rica the Fair Trade Advocacy Office (FTAO) uncovers UTPs in the banana supply chain which appear to be similar to the ones already been taken up in this paper. Compared to all actors involved in the banana production and the eventual supply, the farmers receive the smallest value share whereas traders and retailers benefit from this unequal gain distribution (FTAO 2014: 3). Besides the disproportional divisions of financial resources among the different actors, the minimum wage for agricultural labourers set by the government of Costa Rica appears to be inadequate to meet the needs of a standard family.¹⁷ Aggravating this situation many banana companies do not pay the minimum wage due to the absence of trade unions. A status which is caused by anti-union policies (ibid. 3).

The foregone part illustrated possible threats to fair trading practices among the food supply chain by means of a literature

based approach towards three variables. It became clear that trading practices among the food supply chain cannot be characterised through forms of equality or similar access towards resources, neither in a financially sense nor in terms of market- or bargaining power. Setting consequently these forms of unfair and uneven opportunities of shared out components of economically power among actors within the food supply chain for granted the next part of the paper focuses on selected food-specific legislative measurements implemented by Member States to tackle UTPs evolved in the variables.

Measures

Considering the EU context it can be observed that certain Member States pursue specific food-related legislative measurements in order to prevent UTPs at the expense of economically weaker actors to be forming part of national food chains (Renda et al. 2014: 14).¹⁸ These are, as already had been defined in the introduction of this paper: the Czech Republic, Hungary, Italy, Slovakia, Spain and the United Kingdom (ibid. 14, 148, 176, 184, 218, 226, 235).

Through investigating pertinent national legislative actions against UTPs, the deep content related interconnection between the three variables referred to in the foregone passage once more becomes clear. This is especially true for the two variables bargaining power and market power/anti competitive practices which mainly encompassed unequal scopes of realizing actor related interests and starting positions in bargaining processes. In context of these two heavily interconnected variables particularly the jurisdictions of Slovakia and the United Kingdom can be emphasised as they implemented notably precise and comprehensive legislative codes. In the Slovakian case, Law 362/2012 on unfair trading practices related to food, administers conditions on chain stores to prevent them from abusing their strong economic position by imposing unilaterally terms on economically weaker actors (ibid. 219). Concerning measurements of sanctions which are imposed when conditions appear to be disregarded, Law 362/2012 refers to penalties ranging from 1,000€ to 300,000€.¹⁹

The judicature of the United Kingdom introduced in this context the Grocery Code Adjudicator Act 2013. It imposes legally binding obligations on the ten largest supermarket retailers of the United Kingdom.²⁰ By addressing the retailers with the highest access to financial capital, the Grocery Code Adjudicator Act 2013 tackles specially the implications of the variable market power/anti competitive practices, as it was characterised in the first part as being responsible for limiting the personal leeway of the actors not to be associated

14 A critical and informative analysis about the findings of the European Commission can be found in Matthews 2015.

15 As the focus of the paper lies upon Member States of the European Union, the USA and Costa Rica will only be considered in context of the third variable: unequal gain distribution.

16 Especially in 2010 and since mid-2013 the prices farmer receive for crop products do not cover the production costs.

17 9,598.73 Colón= \$17,75 (Costa Rica Law 2015).

18 An informative and detailed comparison between all Member State's actions towards UTPs in both retail and food sector can be found in Renda et al. 2014: 128-239.

19 The penalties become relevant for disagreeing contracts which had been drafted after 1 January and 28 February 2013 (ibid. 220).

20 It addresses those with an annual turnover of more than £1 billion (ibid. 236).

Table 1: Producer Price: Bread and Cereals Unit of measure: Index, 2010/100/Year of measure

Producer Price: Bread and Cereals Unit of measure: Index, 2010*/100/ Year of measure	January-2005	January-2006	January-2007	January-2008	January-2009	January-2010	January-2011	January-2012	January-2013	January-2014
Member States										
Hungary	72,9	74,3	87,4	122,4	103,4	91,3	130,7	130,8	158,7	132,8
Italy	80,1	79,7	90,6	135,1	109,5	98,9	118	121,7	127,3	117
Spain	85,8	84,69	90,12	120,08	117,03	99,46	112,86	118,36	127,94	119,22
United Kingdom	82,7	83,7	86,9	104,4	107,5	98,9	108,3	114,7	124	118,6

Source: Own representation based on Eurostat 2015

* Eurostat uses the index of 100 to illustrate a financial development over time. The index number abstracts from the real values (e.g. price in certain currencies) and only reflects the change in comparison with the value in a reference period. For simplicity reasons the reference value was set to 100. An index value of 105 would then indicate an increase by 5 per cent compared to the value in the reference period (i.e. 2010).

with high financial capital. As a result of the Grocery Code Adjudicator Act 2013 obligations are imposed on designated retailers which are in high financial funds, which restrict a haphazard gambling with their market power and influence. Examples for these obligations are the prohibition of delays in making payments or the requirement of payments for resolving consumer complaints. The latter with exceptions (ibid. 237).

Besides legislative measurements of Slovakia and the United Kingdom also Spanish jurisdiction addresses with Law 12/2013 concretely imbalances of bargaining power and closely related to that, anti-competitive trading practices that distort the market and cause negative effects on the competitiveness of the whole agri-food sector (ibid. 227).

In this context also Hungarian law in the form of Act XVI of 2003 “on the Agricultural Market Organisation” and Act XCV of 2009 “on the Prohibition of Unfair Trading Practices vis-à-vis the Suppliers of Agricultural and Food Products” can be considered (ibid. 178-179). Both acts include measurements against forms of abuses of economic dependences and bargaining power. Provisions in Act XVI moreover focus on unfair shifting of commercial risks and abuses of confidential information during contractually caused commercial relationships (ibid. 179).

Together with the Member States mentioned also Italian and Czech legislature present legislative actions towards UTPs being presented through the variables bargaining power and market power/anti competitive practices. In the Italian case Law-decree 24.1.2012, Nr. 1, which was converted with amendments by Law 24.3.2012, Nr. 27, concerning commercial (B2B) transactions in the field of cession of agricultural or agri-food products, Art. 62, inter alia focuses on forms of abuses concerning economic dependences and bargaining power (ibid. 184). So does Czech jurisdiction with Act Nr. 395/2009 Coll. on Significant Market Power in the Sale of Agricultural and Food Products and Abuse thereof (ibid. 148).²¹

It is also the Spanish jurisprudence that calls with Law

²¹ Renda et al. 2014 classify the frequency of the Czech jurisdiction as being non-existent.

12/2013 for the creation of an observatory on the food sector which shall then elaborate a Code of Practice. The new created Food Supply Chain Observatory is supposed to monitor, advise, consult, inform and study the functioning of the food supply chain and mainly its food prices (ibid. 227-229). The fair distribution of financial resources obtained among the different actors within the food chain is a factor of exceedingly importance when tackling UTPs which characterised the variable unequal gain distribution in the present paper. Law 12/2013 reveals a combination between a binding legislative and a rather private approach.²²

METHODOLOGY

The analysis of the first part illustrated that imbalances in current trading practices among the food supply chain heavily exist: mainly at the expense of economically considered weaker parts involved. The second part showed how selected EU Member States legally reacted towards UTPs. The third part of the present paper investigated by means of qualitatively conducted case-by-case analyses that legislative involvement by EU Member States in form food-specific laws that aim to protect suppliers from UTPs being discussed in context of the three variables, positively influenced the farmers share of money received for produced goods. As a result of the correlation described the coming hypothesis was generated and shall be offered for future research on the topic:

Legislative food-specific measurements which focus on protecting suppliers lead to a beneficial monetary share for farmers, by means of influencing the producer price to a monetarily advantageous extent.

The research which eventually led to the hypothesis being described in the preceding will be explained in the following.

As a first step, the producer price for “bread and cereals” was selected as the indicator of measurement and thus as the good of interest (Eurostat 2015). The table below shows the

²² An exclusive example for a legislative measurement of fair price settings can be the Portuguese competition law 19/2012 which goes in this specific domain beyond the scope of the European competition law (ibid. 209).

producer price for “bread and cereals” in the period between January 2005 and January 2014. In contrast to part two of the paper, only Hungary, Italy, Spain and the United Kingdom will be illustrated now. This is because the Czech Republic and Slovakia were not mentioned in the census published by Eurostat 2015.²³

Associated therewith, the exemplary motivated observation with led to the hypothesis of the paper covered second only food-specific legislative measurements to tackle UTPs evolved and being illustrated with the help of the three variables being defined in the first part of the essay. Concerned here were legislative actions being introduced by Hungary, Italy, Spain and the United Kingdom, for reasons already been described in the foregone paragraph. Referring to the respective sections of Renda et al. 2014, that describe food-specific forms of legislation for the four Member States being subject of the study by Eurostat 2015, the paper limited its perspective on the following legislative measurements:

Table 2: Considered food-specific law introduced by selected Member States of the EU to tackle UTPs

Member State	Food-specific law
Hungary	Act XCV. of 2009 on Prohibition of Unfair Distribution Behaviour against Suppliers in Relation with agricultural and food Products (01/01/2010)
Italy	Law-decree 24.1.2012, Nr. 1, converted with amendments by Law 24.3.2012, Nr. 27, concerning commercial (B2B) transactions in the field of cession of agricultural or agri-food products, Art. 62
Spain	Law 12/2013 on measures to improve the functioning of the food chain (04/01/2014)
United Kingdom	Groceries Code Adjudicator Act 2013 (25/04/2013)

Source: Own representation based on Renda et al. 2014: 176, 184, 226, 235

RESULTS

Comparing the value for “bread and cereals” in the Hungarian case it could be observed that right after January 2010 when law was implemented, January of the following year registered 130,7.²⁴ A constant rise of the numbers was to be noticed in the coming years. Especially 2013 showed a significant increase up to 158,7. Compared to the numbers before 2010, with the exception of 2008 and 2009, 2013 revealed a value which was almost twice as high as the period between 2005 and 2007 has revealed. It also could be observed that even though 2014 showed a decrease after the high value in 2013, it was still marked by a higher value than the period from 2005 to 2012 can offer in total.

²³ The reason why the indicator was chosen can be found in context of the introduction.

²⁴ For reasons of linguistic simplification and more pleasant readability only the year will be mentioned in the following. The month of January mainly will be left out.

What can be noticed from the foregone is that the food-specific law being observed in context of the present paper led to a general increase of the numbers listed in the Hungarian section in table 1. Even though table 1 shows a decrease in 2014 the overall trend, especially when the numbers from 2005 to 2012 are taken into consideration, appears to be notably positive.

A similar scenario has shown the case of Italy. Analogically, January 2008 revealed a significantly high value. In contrast to the Hungarian example, however, it was the highest value in the whole period of measurement for the Italian case. Focusing on the legislative measurement observed, it can be noticed that after 2008 and until 2010 the producer price decreased rather constantly again. One year before the implementation of the coming law, it rose and in 2012 finally appeared to be the second highest of all measurements with a value of 121,7. Likewise the Hungarian case, also the Italian example showed an increased number, one year after the legislative measurement had been introduced. The value 127,3 is now the second highest producer price of the time span being investigated for Italy. Also similar to the Hungarian case is the fact that the last value of the table is decreasing.

Whereas in 2014 the decreased Hungarian value of 132,8 appeared to be still higher than the values being presented between 2005 and 2012 the Italian value of 117 in 2014 is still higher than all the values between 2005 and 2007 as also between 2009 and 2010. Seeing the broader picture also regarding the Italian case a rather positive trend can be observed after law had been introduced.

Comparable with the Hungarian and the Italian case, the value of Spain also appeared to be relatively high in 2008. 2008 had been preceded with more alternating numbers. Following the numbers until 2013, when the observed law had been implemented, numbers were shifting again. This time on a higher level, however. 2013 which was characterized through the highest value of the Spanish section with 127,94 is followed by 119,22 in 2014. A value which is slightly lower than in 2013, but at the same time, apart from 2008, higher than any other value in the whole section.

What can be seen in the Spanish case is to some extent consequently similar to the Hungarian and Italian example. The Hungarian, the Italian and also the Spanish value of 2014 appear to be smaller than the value of 2013. Nevertheless it also can be noticed, that even though the value of 2014 is characterised of its decreased worth it is still higher than other values being observed in the period between 2005 and 2014. In the Spanish case the value of 119,22 is still consequently higher than the values between 2005 and 2007, as between 2009 and 2011.

Looking at the year 2008 the example of the United Kingdom showed the value 104,4. Ever since the start of the statistical measurements in 2005 it appeared to be the highest one presented. As a result the United Kingdom follows a similar trend like Hungary, Italy and Spain which registered rather high numbers around 2008 as well. In 2013 the highest value could be observed with 124. The case of the United Kingdom revealed, even though the value of 2014 is lower

than 124 after the concerned law had been introduced in 2013, that the decreased number of 118,6 was still higher than every single value listed in the section of the United Kingdom before 2013 when law had been implemented. An equal trend could be investigated in context of the Hungarian example. Values after 2010 were higher than every number being presented before the law had been implemented. In the Italian and Spanish case the value which was generated after the food-specific law had been implemented, appeared to be only averagely higher than numbers which were raised beforehand. Nevertheless the difference between the Spanish value of 2014, with 119,22 and 2008 with 120,08 was rather null. In other words: After the Spanish case revealed a decrease after the rather successful year in 2008, 2014, after legislative had been implemented, could be a starting point for going back to the monetary peak of 2008.

As a result of the observations described the qualitative investigation in the form of case-by-case analyses, led to the hypothesis that legislative food-specific measurements which focus on protecting suppliers lead to a beneficial monetary share for farmers, by means of influencing the producer price to a monetarily advantageous extent. It could be shown that even when numbers were slightly decreasing after law had been implemented they still appeared to be higher than most of the rest being measured by Eurostat 2015. A positive correlation between legislative food-specific measurements and a more advantageous monetary share for farmers could be observed after the investigation conducted.

CONCLUSION

The occasion for delivering the present paper was based in a deep concern about trading practices in context of the food supply chain. An uneven and unfair distribution to scopes of realizing actions is no exception and characterises daily actions in the food sector. Willing to both raise awareness for UTPs and to clarify that food-specific legislative measurements targeting UTPs at the expense of economically weaker actors among the food supply chain, can have a positive influence on the profit which farmers receive for a produced good, the paper commenced by suggesting three variables which were to illustrate by means of back references to relevant thematically familiar literature. It became clear that scopes of access towards bargaining- and market power, as wells as monopoly statuses and forms of profit distributions, tend to be distributed heterogeneously among the actors involved in the food supply chain. It was shown that mainly farmers, small suppliers or retailers in general make confessions to higher settled actors in the food supply chain. It became obvious that unfair practices in trading and allocated possibilities of asserting economic perceptions cannot be perceived as isolated phenomena.

In a next step the paper presented selected possible and gratifying reactions towards UTPs evolved in context of the three variables, in the form of national legislative reactions towards UTPs in context of the food supply chain. As a result the impression arose that binding measurements in the food

sector can be realized in a comprehensive and precise way, as also that legislative actions can be combined with private treatments.

In the run-up to the paper the indicator "bread and cereals" which was measured concerning EU-national producer prices by Eurostat 2015, was set in relation to food-specific legislative measurements being introduced by EU Member States: namely Hungary, Italy, Spain and the United Kingdom.²⁵ Through qualitative case-by-case studies the existence of a correlation between the implementation of food-specific law and a beneficial shaping of the producer price became clear. Throughout this investigation the hypothesis of the paper was generated. At this point ends the contextual contribution of the paper at hand: not its research interest, however.

The literature report concerning forms of UTPs within the three variables as also the hypothesis generated through the case-by-case studies are considered to serve as a preliminary stage for further investigations. By means of a bigger dataset and quantitative methods the hypothesis which was generated in the run-up to the paper can be subject to coming studies which investigate correlations between food-specific legislative measurements and producer prices. Speaking about producer prices for produced goods, also the selection of different indicators means a scientifically attractive way of investigating if certain producer prices of certain indicators are stronger affected than others, when set into relation with food-specific law against UTPs. Also research on legislative actions which concretely foster on protecting farmers, not primarily suppliers, from being affected by UTPs can interestingly challenge the hypothesis generated in the paper.

As the paper sees its academic value in introducing thoughts and argumentations for further research also the period of examination provides opportunities of change in future studies. The time span observed in the third part of the essay reaches from 2005 to 2014. Nevertheless it also seems a worthwhile goal to go further back in history to even investigate former strategies of EU Member States towards UTPs among the food supply chain. In this context it can also be an enriching focus to integrate non-EU countries in further research which could investigate the veracity of the hypothesis presented for a selected context within the EU. The first part of the paper already started to include the USA and Costa Rica in considerations of UTPs. Besides the information that UTPs at the expense of economically weaker actors in the food sector seem to be a rather global and not only EU-specific problem, also proposals for solutions or ways of effective legislative measurements from non-EU jurisdiction could be extracted and possibly transferred to the EU context.

What became clear once more, not least through the argumentation of the present paper, is that forms of unequal profit distributions and bargaining power mean a great threat to a fair functioning of economical processes among the food supply chain. On an exemplary basis it was shown that a positive correlation between legislative measurements and the

²⁵ Corresponding legislative measurements observed, tackled UTPs being addressed in the three variables.

producer price can be assumed. The task of coming research should be now to deepen the hypothesis suggested in context of the present paper by connecting it in different ways to other products and legislative measurements. If being confirmed for different contexts the hypothesis may accumulate influence and strength. As a tool of political pressure it could thus help to stimulate discussions about new legislative proposals which might start to end UTPs of becoming even more extensive than they already are.

The concept of a fair food supply chain is in many cases not valid as was shown in the foregone. Ideally markets underlie reciprocal relationships, processes, actions and offers. As UTPs occur, the reciprocal dimension is mostly gone and only certain actors are affected by them.

Working on the reduction and gradual termination of UTPs to be forming part in economic processes is surely a matter of justice and therefore to be fostered in the future.

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